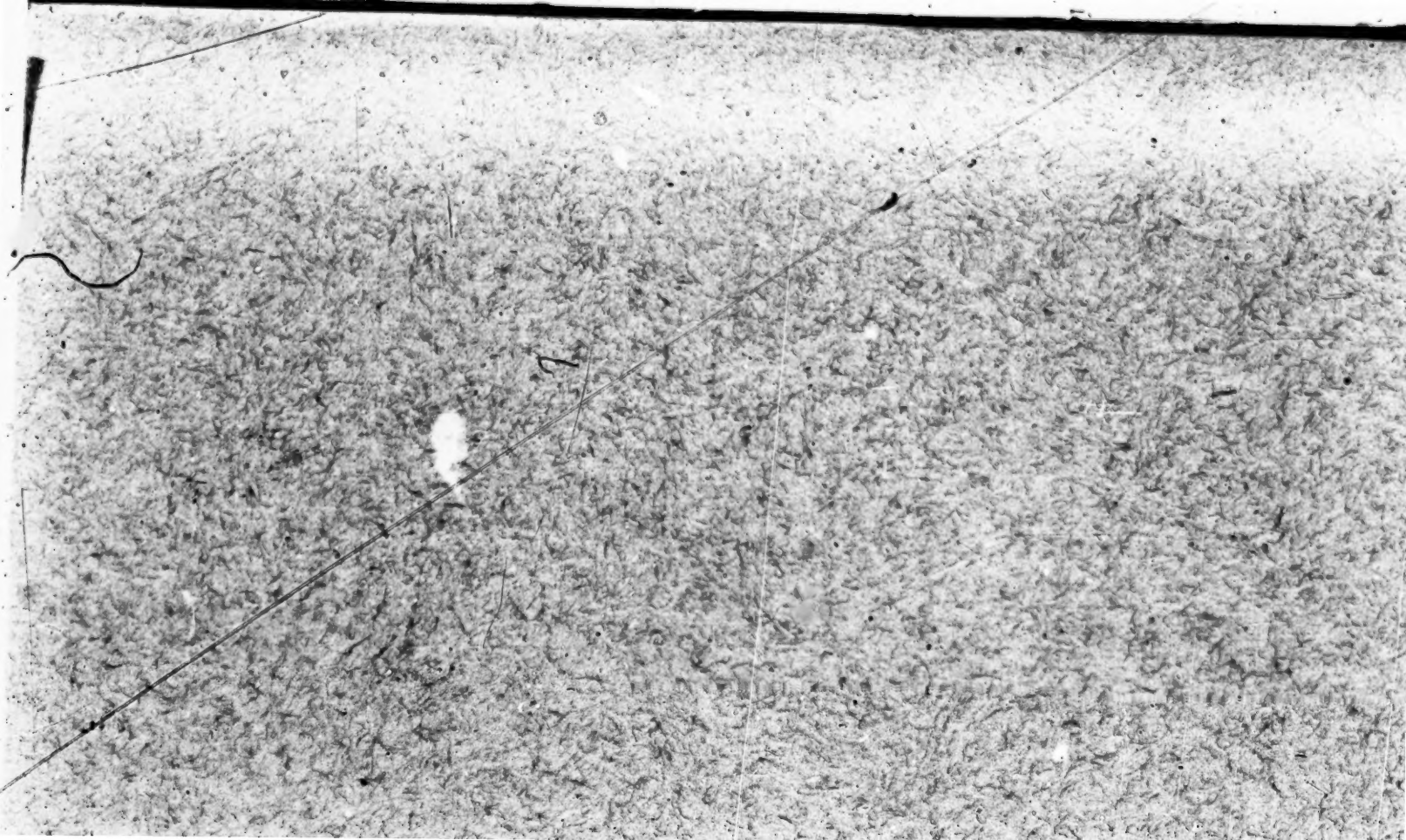


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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 270

SWIFT & COMPANY, *Petitioner*,

v.

THE UNITED STATES OF AMERICA, *Respondent*.

No. 271

NATIONAL BISCUIT COMPANY, AND THE GREAT ATLANTIC & PACIFIC TEA COMPANY, *Petitioners*,

v.

THE UNITED STATES OF AMERICA, *Respondent*.

Brief of Amicus Curiae, National Milk Producers Federation, in Support of Petition for Writ of Certiorari

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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THE INTEREST OF AMICUS CURIAE

The National Milk Producers Federation is a national farm organization in the nature of a trade association. It represents approximately half a million

dairy farmers and some 800 dairy cooperative associations which they own and operate. The Federation for many years has served as a national spokesman for dairy farmers before Congress and the Federal administrative agencies.

These cases involve the construction of the statute authorizing price supports for dairy farmers as producers of milk and butterfat (Sec. 201 of the Agricultural Act of 1949, 7 USC Sec. 1446, 63 Stat. 1052). The Federation participated in the drafting of this section, helped to develop the price support program which it embodies, and actively supported its adoption by Congress.

One of the deciding factors in these cases is whether Congress used the word "purchases" in that section to indicate transactions having all the formal characteristics of an ordinary commercial purchase or in a special sense to designate a purchase-type price support program as distinguished from a Brannan Plan, or subsidy-type, program. The Federation was in the thick of the Brannan Plan fight in Congress in 1949, and it was largely at our insistence that the Brannan Plan was rejected and a purchase-type support program was adopted for the dairy farmers. We asked that the word "purchases" be used in the statute and that the words "payments and other operations" be left out to preclude the use of the Brannan Plan for dairy products. The name of the Federation at that time was National Cooperative Milk Producers Federation.

The transactions involved in these cases were part of an operation carried out by the Secretary of Agriculture in an effort to fulfill his obligation under the

statute to maintain prices to dairy farmers, as producers, at the previously announced 1953-1954 support levels during the closing months of the marketing year ending March 31, 1954. The Federation acting for and at the request of dairy farmers urged the Secretary to undertake the 1954 operations in the hope that they would stop, or at least slow down, the premature sliding off of farmers' prices which were scheduled to drop from 90 to 75 percent of parity on March 31, 1954.

Dairy farmers represented through the Federation benefit from the price support program authorized by the 1949 statute. Without this statute, the current surplus production, although relatively small, would demoralize the market. Dairy farmers also benefited from the 1954 transactions. They maintained farmers' prices nearer 90 percent of parity during the last few weeks of the 1953-54 marketing year than would otherwise have prevailed. Moreover, the long range effect of those transactions was to make the support program more effective.

Thus in a very important sense it is our statute that is being construed and our price support operation that is under attack.

Some of the dairy cooperative associations represented through the Federation participated in transactions with the Commodity Credit Corporation similar to those under consideration in these cases, and demand has been made upon them by the Department of Justice for large sums of money on the ground that such transactions were illegal for the same reasons that the transactions in these cases are charged to be illegal.

The precedent which will be established in these cases, if the court reviews them, will determine whether

the Government has a valid claim against these dairy cooperatives because of such transactions.

The Department of Agriculture is an agency of the Government and cannot effectively speak against the Government in this case in support of the dairy farmers' price support program; although it stoutly maintains that it acted in good faith and within its statutory authority.

The Federation has an interest in this case which goes beyond the immediate issue, the validity of the 1954 transactions, because the interpretation of the statute adopted by the Court of Appeals adversely affects the price support program under which dairy farmers must live by unnecessarily and erroneously limiting its operation to ordinary commercial type purchases. In this respect our interest differs from that of the defendants.

ARGUMENT

We appreciate the privilege of presenting this amicus brief. We shall endeavor not to duplicate the briefs of the parties to the suit but, instead, to reflect in general terms the viewpoint of the dairy farmers whose price support statute and price support transactions are caught in a cross-fire between contending Government agencies.

Importance of the Case

The decision in this case is important to dairy farmers, and to the dairy industry generally, because it involves the operation of the current price support program. The narrow interpretation placed on the statute by the Court of Appeals casts doubt upon price support operations which in all respects are consistent

with the objectives of Congress but which may fail to meet some characteristic of an ordinary commercial purchase. Factors which adversely affect the dairy industry adversely affect the public generally because of the vital importance of milk and dairy products to the welfare and economy of the Nation.

The Decision Below is Wrong

The decision of the Court of Appeals raises important questions of Federal law, which have not been, but should be, settled by this Court. It is unduly narrow, interferes with the policy of Congress, and sets aside economic decisions of the Secretary of Agriculture which the statute provides shall be final.

Both the District Court and the Court of Appeals held the 1954 transactions invalid primarily on the ground that they did not conform in all respects to the technical requirements for ordinary commercial sales. Congress did not intend the word "purchases" as used in the statute to be limited to ordinary commercial purchases where the objective is to acquire and retain the commodity. On the contrary, it intended the word to designate a purchase type of support program, where the true objective is not to acquire or retain the commodity at all—except to the extent that it is necessary to do so to support the market price by providing a reservoir into which the surplus can flow until such time as there is a demand for it in the commercial trade at the current support level. Obviously, the criteria for determining the validity of the subject transactions are quite different under the two interpretations.

All of the legislative history of the statute supports the latter interpretation. There is nothing in the

legislative history to indicate that Congress intended to limit the support operations to ordinary commercial purchases. What Congress did intend was to limit support to a purchase-type program as distinguished from a Brannan Plan program.

The Legislative History

The intention of Congress is best ascertained when the words used are read in the same light that was available to the Congress that adopted them. The wording of section 201 of the Agricultural Act of 1949 (7 USC Sec. 1446; 63 Stat. 1052) has a special meaning readily understood when considered in connection with the conditions that prevailed in the 1949 session of Congress.

We are hopeful that in this brief we can help to recall the legislative atmosphere in which Congress passed the statute under consideration, because we were there when the statute was passed. With respect to the dairy support program, we asked that supports be mandatory, and for the first time dairy price supports were provided on a mandatory basis. We suggested that the price support range be set between 75 and 90 percent of parity and that the Secretary determine the level within that range. We asked, especially, for a purchase-type program which would result in market prices being supported instead of a Brannan Plan or subsidy-type program which would permit market prices to drop.

The legislative history of the 1949 Act leaves no doubt that Congress intended to give the dairy farmers the type of support program they wanted—not the kind Secretary Brannan was recommending for them. Since it was the Federation, speaking for the dairy farmers,

that told Congress what the dairy farmers wanted, we feel that we are in a position to comment with special knowledge on what Congress had in mind when it used the words that it did.

Dairy farmers had gone through an unhappy experience with subsidies during the war years when they were used to keep consumer prices down. Consumers developed a false sense of value, and there was a sharp reaction against dairymen when the subsidies were removed and dairy prices returned to their true level.

The subsidy issue became explosive in 1949 when Secretary Brannan announced the Brannan Plan. There was an immediate reaction against it. Our people turned against it as soon as they learned that it contained provisions for a subsidy-type program which would again develop a false sense of value on the part of consumers. Under the Brannan Plan, market prices would be permitted to fall, consumers would enjoy abnormally low prices, and the income of farmers would be supplemented through subsidies.

The various drafts and redrafts of the bill as it moved through Congress reflect the battle between the Secretary and the Federation. In the final bill, the words "payments and other operations" were left out of the dairy section because they had acquired a special meaning signifying the Brannan Plan, and the Secretary was directed to support dairy prices through "purchases" because that word had acquired a special meaning signifying a purchase-type of support program. This wording was not used to limit dairy supports to ordinary commercial purchases. What Congress did was to reject Secretary Brannan's proposal and give the dairy farmers what they asked for—a

purchase-type program, then well understood and previously used, under which market prices are maintained at a fair level by providing a reservoir into which surplus commodities can flow at support prices when there is no demand for them at such prices in the commercial market.

No Brannan Plan in 1954

The transactions challenged here did not constitute a program of the Brannan Plan type which Congress intended to preclude when it enacted the dairy section of the 1949 Act. There are many distinctions, but the important and fundamental reason is that they were not designed to permit the market price to fall below the support level. On the contrary, their sole objective was to maintain the market price for dairy products, and thereby support producer prices at the then applicable support level, until the close of the marketing year, March 31, 1954. They were, therefore, purchase-type support transactions of the kind which Congress authorized in the 1949 Act.

Butter and cheese committed under announcement DA-112 did not move into the channels of commercial trade at less than the applicable support price during the marketing year ending March 31, 1954. Neither did these products move into the trade after March 31, 1954, at less than the then applicable, but lower, support price set up for the following marketing year. There was nothing in this operation which was not consistent with the objectives of the 1949 Act or which resulted in letting market prices fall through the use of a subsidy. Instead, the transactions were designed to support market prices at the 90 percent of parity level through the full term of the 1953-54 marketing

year for which that level had been set and then, on April 1, to permit them to drop to the new 75 percent support level which was to be applicable for the next marketing year beginning on that date.

The products released in April in accordance with announcement DA-112 were made available to the trade in the 1954-55 marketing year at prices above the then applicable support level. The fact that these sales were below the support level for a prior marketing year did not impair the support price in effect at the time the product was permitted to move into commercial channels in the new marketing year.

The DA-112 transactions were the result of an administrative decision which the Secretary had to make in the light of the facts then available and in the time at hand. We believe his decision was sound and that it was reasonably calculated to further the objectives of the program. The statute provides that the Secretary's decision shall be final (Section 412 of the Agricultural Act of 1949, 7 USC 1429, 63 Stat. 1057) so the trade can and will rely on it. Many of our cooperative members did rely on it and have paid out money to the farmers which they cannot now recover.

The Secretary was under a directive from Congress to maintain dairy farmers' prices at the announced support level of 90 percent of parity for the full term of the 1953-54 marketing year ending March 31, 1954. These prices were starting to slide off well in advance of the end of the marketing year in anticipation of the sharp drop in dairy product prices scheduled to go into effect on April 1. Had the Secretary not made full use of the authority available to him to stem this premature dropping of the farmers' price, we think he would

have been derelict in carrying out the wishes of Congress.

Charges that the Secretary's decision was unwise, that he should have acted earlier, or that the 1954 transactions could have been better safeguarded are not properly addressed to the Court. The only issue here is whether his actions were within the very broad discretionary authority of the statute and reasonably calculated to carry out the objectives of the 1949 Act. It is conceded that the Secretary acted in good faith.

It was known in advance that some of the products sold to CCC in March at the March support level would be repurchased by the trade in April at the lower April support level plus the standard mark-up, and there was no inconsistency in permitting the March offer to be combined with an agreement to repurchase in April as was done in DA-112. Neither was there any reason to require such products to be moved into CCC warehouses and later retransported to the offerer.

The DA-112 transactions actually operated effectively to carry out the support program. Butter and cheese placed under DA-112 would not and did not move into the commercial market during the 1953-54 marketing year at less than the support price in effect for that year. The so-called options to the contrary notwithstanding, there was no incentive to withdraw and sell on the market for less than the DA-112 support price already available through CCC.

Had sales become available on the market at prices above the DA-112 support price, withdrawing the product from DA-112 for such sales would not have interfered with the objective of maintaining the support level. In fact, permitting the product to flow back

into the trade at prices equal to or above the support level is consistent with the theory of the purchase-type program. The effect is to stabilize the price at the support level and prevent fluctuating lows and highs.

Eliminating needless waste and expense in transportation, storage, and packaging under DA-112 did not interfere with the support program, and it did result in substantial savings to both the Government and the offerers. The fact that there was a settlement of accounts covering March purchases and April resales and that one check was issued for the difference did not change the effect of the transactions for price support purposes nor result in a subsidy of the Brannan Plan type which Congress intended to preclude in the 1949 Act.

The DA-112 transactions did not result in windfall profits to the companies involved. The products that they sold to CCC in March under DA-112, like the products they sold to CCC under DA-99 and DA-100, had been made from milk and butterfat bought from farmers when prices were supported at the higher level in effect for the marketing year ending March 31, 1954. These sales to CCC were in accordance with the commitment announced in February 1953 that CCC would buy such products at any time throughout the 1953-54 marketing year. These same products that the companies bought back from CCC at lower prices in April were subsequently marketed by them in a period of lower market prices.

The benefits to producers which resulted from the DA-112 transactions are not measured by the number of dollars involved in those contracts. To the extent that milk prices were strengthened in the latter part

of the 1953-54 marketing year, benefits accrued to farmers from sales of milk all over the Nation.

CONCLUSION

Whether the transactions here involved complied with all of the technical requirements for ordinary commercial purchases is not controlling in determining their validity. The important factor is whether they were consistent with the objectives of the statute. The DA-112 transactions were consistent in all respects with the objectives of the purchase-type support program authorized by Congress and were reasonably calculated to further the objectives of the statute.

This case is of great importance to the dairy industry and to the Nation generally because the narrow construction placed on the 1949 Act by the Court of Appeals adversely affects the current support programs for milk and dairy products.

We urge that the petition for a writ of certiorari be granted and that the decision of the Court of Appeals be reviewed by this Court.

Respectfully submitted,

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